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Pavak

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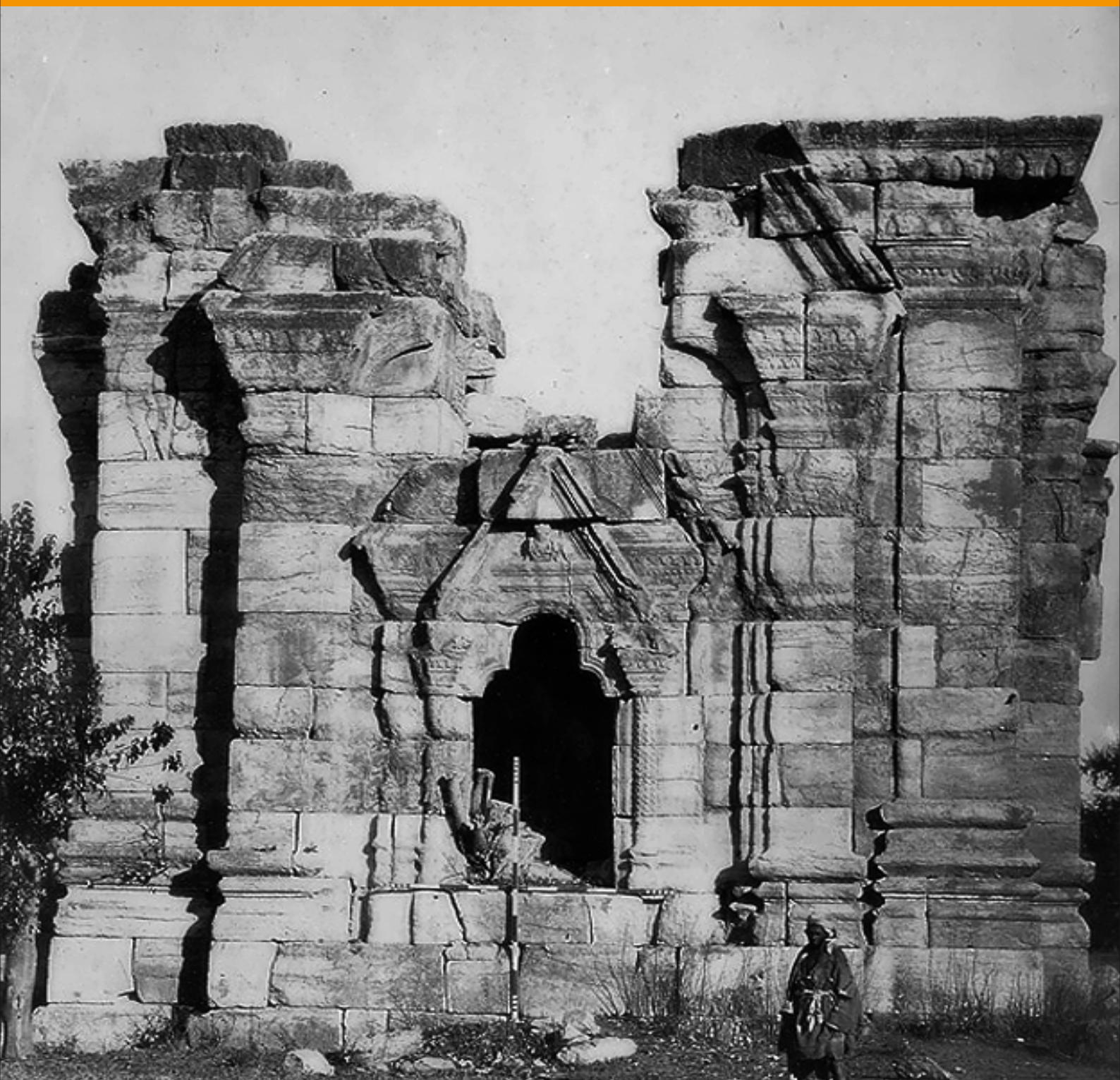

Cultural Genocide:

The truth of Irreversible Annihilation.

अपथ्याशीवबालःसामन्तसहितस्ततः।
जनानाम जातिविध्वंसे सूहभट्टः कृतोद्यमः।

- Pandit Jonaraja, Father of Genocide Studies

Pandit Jonaraja, the author of second Rajtarangini that follows the Rajtarangini of Kalhan, was a Kashmiri Shaivite Bhatta Brahmin. His real name was Jyotsanakar, meaning the creator of moonlight. This poetic name was true to his being. He was an exceptional and sensitive poet, well versed in history, astrology, Ayurveda, Yoga and subtler aspects of all these disciplines. He was a renowned Sanskrit scholar. His year of birth as per the records available is estimated as 1389-90.

Like Kalhan he has written the history of Kashmir in poetry. That is not all there is about him. He has recorded the genocide of Kashmiri Pandits in detail and delineated its aspects like the present day genocide scholars.

Jati Vidhwans—this is the word Jonaraja has coined to describe genocide. He has defined genocide and his definition almost mirrors the definition given by Raphael Lemkin. He has even pointed out the special intent that motivates the perpetrator and given a very sensitive and vivid account of how an ideology radicalises a regime and effects a total change in its mode of operation that leads to genocide. He has made it clear that the mind of a perpetrator is at a very low level of maturity. That is the view held by present day genocide scholars also. He has defined genocide and his definition is almost equal to the definition given by Raphael Lemkin. His account of the first exodus of Kashmiri Pandits, if placed in correct context, is no different from the atrocities the community faced in 1990.

Roots of the field of genocide studies are found in Pandit Jonaraja. He in every sense is "**Father of Genocide Studies**."

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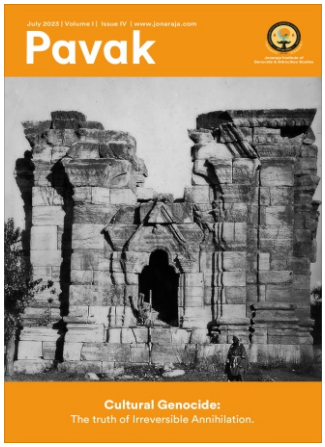

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The Abyss of Cultural Genocide

In this editon of Pavak we discuss the difficult but important issue of cultural genocide. We bring you the examples of Kashmiri Pandits and East Bengal Hindus to explain how cultural genocide takes place and how it can be identified. We bring you the legal framework of defining cultural genocide and why it has not been codified yet. We also discuss that while it is difficult to identify cultural genocide, its existence and its repercussions are hardly debatable.

Sunanda Vashisht
Editor-in-Chief, Pavak

I grew up in what is described by Kashmir Historians as idyllic 80's in Kashmir valley. Indeed to an outsider everything looked serene. The Dal Lake flowed as it always did, the chinar leaves turned orange as they always did and Hindus of Kashmir lived under cultural genocide as they always did. The terrorism as is defined now came a decade later. The cultural conquest of Hindus also knows as Kashmiri Pandits was 700 years old. Unlike military conquests, cultural conquest starts brutally and having achieved a threshold becomes subtle, sometimes even benign. The victims of cultural genocide become willing party to their own oppression. Just as Kashmiri Pandits did. They had learnt to tone down their festivals, they had learnt to remain hidden, and they had learnt to keep their voices down.

It was in such idyllic 80's that I saw a young Kashmiri pandit boy walking to a store to buy milk. As luck would have it, there was a cricket match going on at that very moment somewhere outside J&K. India was playing Pakistan and Indian side was batting. As the Pandit teenager reached the store and was paying for the milk he had bought an Indian cricketer hit the Pakistani bowler for a six. Milkman's son who was the same age as Pandit boy was sitting in the shop listen to the cricket commentary on radio. As soon as the ball was hit for a six, the Muslim teenager slapped the Pandit boy across his cheek, muttered some expletives under his breath and went inside. I was watching this whole scene from the window of my house. The milkman pretended to be angry with his son and blamed his youth for such behavior. The Pandit boy by now red in face with humiliation ran away. He looked around to see if anyone had seen him. Our eyes met. His humiliation became unbearable because I had seen it. He was not nearly as upset about the slap because Pandit boys were used to this humiliation. He was destroyed because I had watched this whole incident. I never saw that boy for rest of the year. He drowned himself in his studies but this secret remained between the two of us. It never occurred to him that he should hit back or tell his parents. The boy was a perfect victim of Cultural genocide. He believed that he deserved to be slapped.

The deliberate destruction, suppression, or erasure of a particular group's cultural identity, practices, and heritage is referred to as cultural genocide. It is characterized by measures taken to compromise, erode, or completely eradicate the cultural, linguistic, religious, or traditional components that make up a group's unique identity. When the dominant group forces behavior on marginalized community it is commonly referred to as cultural genocide. These activities can include banning the use of a specific language, eradicating cultural customs and artifacts, forcibly integrating people into the dominant culture, removing groups from their ancestral lands, and destroying cultural relics and locations.

The term "cultural genocide" was initially coined by Raphael Lemkin, a Polish lawyer, in the context of protecting cultural heritage during times of war. It was later expanded to include broader forms of cultural destruction, and it gained recognition as a violation of human rights under international law.

Cultural genocide is considered a severe violation of the rights of affected communities. It not only damages the cultural fabric of a group but also disrupts their social cohesion, identity, and sense of belonging. The impacts of cultural genocide can be long-lasting and have intergenerational consequences, as the loss of cultural heritage can be challenging to recover.

Historically, Hindus have faced various forms of cultural suppression and marginalization. One such example is the destruction of Hindu temples during invasions by foreign powers, particularly during the medieval period in India. These invasions resulted in the demolition of numerous Hindu temples, many of which were replaced with Islamic structures. A group of Gujarati Brahmins who lived near Somnath temple were uprooted during the destruction of the temple by Islamic marauders. These small groups finally found home in southern India and now are called Saurashtrians. They have made Tamil Nadu their home but they trace their roots to Gujarat. The community has struggled to keep their culture alive but today they are at best an amalgamation of both Tamil and Gujarati traditions. They survived but the original culture was lost forever. Now when their offspring decides to go back to Gujarat they will not be able to recreate the traditions of 12th century. There are numerous examples like this. Cultural genocide unlike what most people think is not reversible.

It is true that culture is not static and keeps changing with the time but that change is organic, gradual and not traumatic. The loss of culture that happens in cultural genocide is sudden, traumatic and imposed from outside. It leaves scars and a feeling of helplessness in the victim. Reversing the effects of cultural genocide is so complex and such a multifaceted process that it has never been successful in modern times.

In this editon of Pavak we discuss the difficult but important issue of cultural genocide. We bring you the examples of Kashmiri Pandits and East Bengal Hindus to explain how cultural genocide takes place and how it can be identified. We bring you the legal framework of defining cultural genocide and why it has not been codified yet. We also discuss that while it is difficult to identify cultural genocide, its existence and its repercussions are hardly debatable. If we are able to codify cultural genocide we might be able to approach genocide studies better.

Raphael Lemkin was already emphasizing the importance of attacks on a group's culture as a crucial component of what he would later name genocide at an early point in his thought process. He witnessed the terrible application of his beliefs during the later German conquest of his own Poland. Particularly in the hands of a brutal occupying force, he learned how horribly synergistic the combination of barbarism and vandalism—physical and cultural destruction—could become. Lemkin was compelled to enlist in the ranks of the internally displaced very early on. He gained a deeper awareness of the intricate relationships between cultural and physical ruin as a result of his own experiences. The aggressors realized that eradicating a culture or way of life was a more difficult task than mass murder. He also realized that there were numerous interconnected components or methods of genocide.

Closer home, Pandit Jonaraja had identified cultural genocide already. It is befitting that as a true tribute to father of genocide studies –Pandt Jonaraja and modern architect of genocide studies –Raphael Lemkn, we at least start debating Cultural genocide seriously and begin the process to codify it.

Cultural Genocide and the Quest for Restitution: Rediscovering Lost Heritage

Understanding the trajectory of cultural genocide requires acknowledging the interplay between law, politics, and history. The struggle over the definition of genocide cannot be fully explained without considering how political influences shape legal and historical interpretations. The meaning of genocide has undergone a significant transformation, shifting from a holistic concept that encompassed cultural aspects to one primarily focused on physical and biological aspects. This narrowing down of the concept has had implications for the recognition and prosecution of cultural genocide.

Tito Ganju
Chairman, JIGAS

In September 2016, the International Criminal Court (ICC) delivered a significant verdict in the case of Prosecutor v. Al Mahdi, which addressed cultural destruction as a distinct issue. This decision was widely praised for acknowledging the connection between an attack on a group's cultural heritage and its destruction. However, despite recognizing this link, the Court did not charge Al Mahdi with the crime of genocide, which deals with the destruction of groups. Instead, he was indicted for the war crime of destruction of cultural property. This raises the question of why Al Mahdi was not indicted for cultural genocide and highlights a gap between popular understanding and legal conceptualization.

To comprehend this gap, it is necessary to delve into the early stages of developing the crime of genocide. Cultural genocide was initially conceived as a sub-category or aspect of genocide in international law. It encompassed the deliberate and systematic destruction of a group, targeting both tangible (such as places of worship) and intangible (such as language) cultural structures. It aimed to establish both criminal prohibitions and restitutive measures. However, during the treaty negotiations in the 1940s, the concept of cultural genocide did not survive, remaining dormant until the 1990s.

The original conceptualization of genocide, put forth by Raphael Lemkin, gave cultural genocide significant prominence. Lemkin believed that a new legal category was necessary because genocide could not be reduced to mass murder alone. He saw the Nazi crime as distinct due to its methodical attempt to destroy a group beyond typical war crimes and acts of repression. For Lemkin, the essence of genocide was cultural—a systematic attack on a group and its cultural identity, a crime targeting difference itself. Ironically, the final text of the Genocide Convention did not explicitly prohibit cultural genocide. Only a faint reference to this notion can be found in the Genocide Convention, where the forced transfer of children is prohibited.

The omission of cultural genocide from the Genocide Convention and the failure to indict Al Mahdi for this crime can be attributed to the complex and politically charged nature of international law. Treaty negotiations involve compromises and differing perspectives among states. The Genocide Convention focused primarily on physical and biological genocide, reflecting the priorities and interests of the negotiating parties at that time. Cultural genocide was relegated to the sidelines and did not receive explicit recognition.

The absence of a specific legal prohibition on cultural genocide in the Genocide Convention has had a lasting impact on its recognition and prosecution. Although the ICC verdict in the Al Mahdi case acknowledged the destruction of cultural heritage, it did not extend the charges to cultural genocide due to the limitations imposed by existing legal frameworks. Consequently, the gap between the popular understanding of cultural genocide and its legal conceptualization persists, leaving room for further exploration and potential future developments in international law.

The disappearance of cultural genocide from the Genocide Convention can be attributed to various factors. One explanation lies in the tension between law and history. The legal perspective aims to designate genocide as the most serious crime and thus restricts it to its physical and biological aspects. It requires specific intent or a plan to destroy a group as such and provides protection to limited classes of groups. In contrast, historians are not bound by legal considerations and can explore the complexity and various dimensions of genocides. They can examine long-term processes, consider multiple motives, and go beyond legal definitions to account for hybrid groups. Some historians also reject an essentialist understanding of culture, recognizing that groups can reinvent their culture in the aftermath of genocidal attacks.

However, it is important to note that law does not solely restrict historical understanding; it can also facilitate it. Legal frameworks provide a means to address and condemn acts of cultural destruction and offer avenues for justice and reparations. Differentiating between courts and legislators, national and international law, and criminal law and private law is crucial. The evolution of legal concepts often involves complex political dynamics that shape both legal and historical depictions of genocide.

Understanding the trajectory of cultural genocide requires acknowledging the interplay between law, politics, and history. The struggle over the definition of genocide cannot be fully explained without considering how political influences shape legal and historical interpretations. The meaning of genocide has undergone a significant transformation, shifting from a holistic concept that encompassed cultural aspects to one primarily focused on physical and biological aspects. This narrowing down of the concept has had implications for the recognition and prosecution of cultural genocide.

Exploring the relationship between law and history in the context of cultural genocide reveals a complex interplay between different actors and perspectives. While the legal framework may limit the scope of cultural genocide, it also provides a platform for addressing and redressing acts of cultural destruction. The ongoing discourse and examination of genocide in both legal and historical spheres will continue to shape our understanding and response to this collective, multi-dimensional crime.

Raphael Lemkin, a Polish-Jewish lawyer, is credited with coining the term "genocide" in his 1944 book Axis Rule in Occupied Europe. There is extensive literature analyzing Lemkin's original understanding of genocide and whether he intended to include cultural genocide. Questions arise as to why he later agreed to its exclusion from the Genocide Convention. Critiques of the legal concept of genocide also highlight its limitations, such as its bias toward a motive or plan, the limited scope of protected groups, and a narrow understanding of the culture being protected. In recent years, legal historians have taken an interest in Lemkin's writings, exploring the various sources that influenced him, including the interwar minorities regime, critiques of imperialism within international and natural law, Zionist thought, and sociological writings on cultural groups.

Rather than focusing on these well-explored areas, we aim to examine what can be learned about the relationship between law and history from Lemkin's method in discovering the crime of genocide. Lemkin's understanding of genocide was informed by a meticulous analysis of legal documents, including the details of legal enactments and Nazi decrees, which he reproduced in

Axis Rule. His approach is unique in that it delves into manifest legal texts—orders, decrees, and laws—that targeted every aspect of the lives of persecuted groups. Lemkin saw the law as both the source of the problem (genocide facilitated through legal decrees) and the key to its remedy. His ingenious method, as explained by Philippe Sands, lies in examining these decrees individually and then collectively across borders, revealing a broader purpose. While each decree might seem innocuous on its own, when analyzed together, they demonstrate a methodical and comprehensive plan of extermination against targeted groups, encompassing their administrative, economic, cultural, and political existence.

Lemkin's approach to understanding genocide through legal documents sheds light on the intricate relationship between law and history. He recognized that laws play a dual role: they can facilitate acts of genocide but also provide the means for addressing and rectifying these crimes. By closely examining legal texts, Lemkin revealed the systematic nature of genocide, unveiling a pattern that emerged when disparate decrees were considered together. This method underscores the importance of studying legal instruments and their implementation in understanding historical events. It also highlights the significance of recognizing the role of law in both perpetuating and combatting genocide.

In exploring Lemkin's approach, we gain insights into the interplay between law and history. By analyzing legal documents and their cumulative impact, we can better comprehend the systemic nature of genocide and the need for legal frameworks to address and prevent such crimes. Lemkin's methodology provides valuable lessons for understanding the intricate relationship between law, history, and the recognition of genocide as a collective, multi-dimensional crime requiring a comprehensive response for its elimination.

Law plays a key role in the historical understanding of genocide for several reasons. First, genocide is an organized crime that relies on the coordination of various sectors, including law, bureaucracy, and the business sector. Legal decrees are crucial for facilitating this coordination, and by compiling and analyzing these decrees collectively, we can gain insights into the nature of the crime and how it differs from mass killings. Understanding the legal framework surrounding genocide helps illuminate the systematic nature of the crime.

Second, genocide is not merely the targeting of a civilian population at random. It is a deliberate and methodical persecution of a specific group with the aim of destroying it as a whole. Humanitarian law, which primarily focuses on the protection of civilians in war, is ill-suited to comprehensively address the historical reality of targeted group persecution. The application of law is necessary to identify and address the multifaceted attack on all elements of a targeted group's identity.

Third, while historians may critique the legal requirement of a specific motive or intent to destroy a group (dolus specialis), Lemkin's method suggests that motive can be discerned not solely from the individual perpetrator's state of mind, but also from the patterns of actions and techniques observed across different locations. By examining the collective body of legal decrees and laws, we can identify the motives embedded within these actions and techniques.

Lemkin's book Axis Rule in Occupied Europe demonstrates his unique approach to investigating genocide. He first identifies the various techniques employed in different aspects of life (political, social, cultural, economic, biological, physical, religious, moral) and then formulates the concept of genocide to encompass these techniques holistically. The book then analyzes the stages of genocide in each occupied state and compiles the legal decrees collected by Lemkin. While some critics may view the book as a historical record rather than a contribution to the law of belligerent occupation, this perspective overlooks the crucial role that legal decrees play in Lemkin's piecemeal method. These decrees are essential for bridging the gap between law and history, allowing for a deeper understanding of the systematic nature of genocide and its historical implications.

The prevailing understanding of genocide recognizes different types of genocide, including physical, biological, economic, political, and cultural genocide. Physical genocide refers to the attempt to physically destroy a group by killing its members, while cultural genocide manifests through policies that force assimilation upon a group. However, current international law limits the definition of genocide to physical or biological extermination, omitting cultural genocide. Some attribute this limitation to Raphael Lemkin himself, as he was involved in the drafting of the Genocide Convention and agreed to the compromise that excluded cultural genocide from its provisions.

There is interpretation of Lemkin's analysis of the various techniques of genocide that suggests a hierarchical division between the different types. However, Lemkin's perspective challenges the prioritization of physical genocide over cultural genocide. He viewed genocide not solely or primarily as mass murder, but as a crime rooted in cultural terms. Lemkin emphasized the need to protect a group for the sake of preserving its cultural identity and diversity within humanity. While debates exist regarding Lemkin's perception of culture, with criticisms raised by historians and anthropologists regarding its elitism and essentialism, it is important to acknowledge Lemkin's fundamental insight that genocide is fundamentally tied to an assault on a group's culture with the intention of its destruction.

Contrary to the common assumption that the definition of genocide in the Genocide Convention limited the category, the concept of genocide emerged as a "common law" category during the Nuremberg trials before the convention was drafted. However, even in the Nuremberg trials, the prosecution's attempt to use the crime of genocide, including in relation to the Holocaust, largely failed. This challenges the idea that the Holocaust served as an ideal type for defining genocide, which then restricted its application to other historical cases. Therefore, the exclusion of cultural genocide from the scope of the prohibition should be understood differently.

The prevailing narrative of the Nuremberg trials focuses on the criminal law's specific requirements, such as the rule against retroactivity and the reliance on precedents from international law, as reasons for the disappearance of genocide from the proceedings. The judgment of the trials only recognized crimes against humanity, limited to wartime, while neglecting the novel understanding of a group's persecution by its own state during both peace and war. This prioritization of aggressive war can be attributed to various factors, including the lack of historical understanding at the time of the trials about the full extent and significance of the Holocaust. Additionally, political motivations played a role, as the Allies feared setting an international precedent that could weaken state sovereignty and justify interference in a state's internal affairs.

However, a closer examination reveals a more nuanced perspective. The subsequent Nuremberg Military Tribunal (NMT) trials focused more on crimes against humanity, indicating a process of learning and adaptation in the legal response to the historical reality revealed in the trials. While genocide may not have been explicitly mentioned in the Nuremberg trials' judgments, it was still prevalent in the discussions and influenced the sentencing. Scholars argue that genocide had a more evident role in the NMT trials. Nonetheless, the emphasis on the paradigm of aggressive war shaped the historical narrative to a significant extent and limited the recognition of genocide's role in the proceedings.

Law plays a key role in the historical understanding of genocide for several reasons.
First, genocide is an organized crime that relies on the coordination of various sectors, including law, bureaucracy, and the business sector.

The Nuremberg trials faced criticism from Poland for their failure to adequately address the cultural destruction suffered by the Polish and Jewish populations under Nazi occupation. In response, Poland conducted its own trials concurrently with the International Military Tribunal (IMT), presenting an alternative narrative centered around Raphael Lemkin's comprehensive approach to genocide. The Supreme National Tribunal (SNT) was established in 1946 to prosecute major Nazi criminals active in Poland during the occupation, based on international and Polish criminal law.
While the SNT's formal jurisdiction was focused on war crimes, it adopted Lemkin's definition of genocide, incorporating the concept of "cultural extermination" and interpreting genocide to encompass all crimes specified by Polish decrees. In the trial of Arthur Greiser, the SNT examined both the "negative" and "positive" aspects of genocide and dedicated a significant portion of the judgment to cultural genocide. The tribunal identified six categories of crimes committed against the Polish population, two of which were labeled "genocidal" and related specifically to cultural repression and religious persecution.
The tribunal highlighted the Nazi plan to germanize the occupied territory through deportation, germanization of children, mass extermination of the Polish and Jewish population, and complete destruction of Polish culture and political thought, referring to it as "physical and spiritual genocide." Notably, the SNT allowed expert testimonies from historians and legal experts, as well as survivor testimonies, departing from the procedures of the Nuremberg trials. This enabled a more comprehensive understanding of the significance of death camps in Poland, as presented by witnesses such as Nachman Blumental, the chairman of the Central Jewish Historical Commission.
While the SNT recognized the genocide against the Jews, it encompassed it within the broader genocide against the Polish people. By emphasizing cultural genocide, the tribunal aimed to draw attention to the suffering of the Polish population and other targeted groups, rather than solely focusing on physical genocide, which would have placed the Jewish people at the center. The Polish example demonstrates that when trials are conducted by the affected group and incorporate expert and survivor testimonies, there can be a shift in focus towards cultural genocide, addressing the limitations of international law. However, whether this conclusion is applicable to all victims' tribunals requires further examination.
The Eichmann trial faced criticism at the time for being seen as a form of "victims' justice." The Israeli prosecution called numerous witnesses, primarily Holocaust survivors, to testify during the trial. The Nazi Punishment Law, which defined a "crime against the Jewish people" based on the Genocide Convention's definition of genocide, shifted the focus to the Holocaust by severing the link to aggressive war present in the Nuremberg trial. However, unlike the Polish example, the cultural genocide was not placed at the center of the Israeli trial.
One significant aspect of the Eichmann trial was the absence of a Yiddish translation, which was particularly noteworthy as many survivors and victims' families in Israel were Yiddish speakers. Additionally, Abraham Sutzkever, who had testified at Nuremberg, was not called to testify in the Israeli trial, despite being an important advocate for Yiddish culture. In his Yiddish literary journal, Sutzkever indirectly criticized the trial for failing to give the Yiddish language a prominent role.
The Eichmann trial aimed not only to address the Holocaust's absence in the Nuremberg trial but also to fit within the Zionist narrative, which saw the establishment of a national home as the appropriate response to the Holocaust. Sutzkever's promotion of Yiddish culture did not align with the Zionist story that associated Yiddish with the Diaspora and emphasized the revival of the Jewish people in Israel, particularly through the revival of Hebrew.
A notable example illustrating the tension between the Zionist narrative and cultural genocide is the testimony of historian Salo Baron in the Eichmann trial. Baron, invited to testify on the fate of European Jewry before and after the war, emphasized the cultural aspects of Nazi genocide and the creative powers of Jewish

What happened to cultural genocide under the Genocide Convention when jurists were no longer bound by legal precedents?

renewal both within and outside of Israel. While the victims' testimonies shaped the memory of the trial and the Holocaust in global consciousness, Baron's testimony has largely been forgotten, likely due to ideological differences regarding the Jewish Diaspora.
Baron, who was also involved in post-Holocaust efforts for Jewish cultural restitution, attempted to bring up cultural genocide and the organized Jewish campaign for cultural restitution. However, the prosecution mainly viewed cultural genocide as evidence of the physical genocide. Baron, a professor of Jewish history, highlighted the irreparable devastation caused by the cultural genocide, particularly the destruction of libraries. He emphasized the historical thesis of Jewish renewal and adaptation throughout centuries, facing numerous adversaries, including the Nazis.
Robert Servatius, Eichmann's defense attorney, questioned the tension between Baron's historical approach and the criminal law understanding of genocide, suggesting that the Germans might have been mere instruments of history. Ultimately, Baron's references to cultural genocide did not appear in the judgment, as the court solely used his testimony to establish the number of Jews murdered during the Holocaust.
What happened to cultural genocide under the Genocide Convention when jurists were no longer bound by legal precedents? After failing to influence the International Military Tribunal (IMT), Raphael Lemkin, the architect of the concept of genocide, shifted his focus to drafting an international convention. The 1948 Genocide Convention succeeded in certain aspects where the IMT had failed by prohibiting genocide in both peacetime and wartime, thereby severing its link to war. However, a closer examination reveals a similar process of narrowing the meaning of genocide as a multifaceted crime.
This narrowing process involved distinguishing between different types of genocide and restricting the scope of the prohibition to physical and biological genocide, excluding cultural genocide. This exclusion undermines the idea of a progressive development from Nuremberg to the Genocide Convention, as it reflects a shared fear of weakening state sovereignty and international interference in a state's treatment of its minorities. In Nuremberg, this intervention was limited by the requirement of a nexus to aggressive war through Article 6(c) of the London Charter, while the Convention achieved it by largely excluding cultural genocide.
The exclusion of cultural genocide also contributes to the prevailing narrative that portrays genocide as an ideological crime committed by totalitarian regimes, rather than democratic ones. By narrowing the definition, acts perpetrated by democracies against their minorities or as part of colonial rule are not recognized as genocide. This demarcation helps maintain a distinction between the laws of war and colonial expansion, which Lemkin aimed to overcome in his book.
As for why cultural genocide did not find its way into the Genocide Convention, the drafting process has been extensively documented but will not be reiterated here.
During the drafting process of the Genocide Convention, there were significant stages where culture played a prominent role, leading to dynamic discussions among the delegates.
The United Nations General Assembly (UNGA) Resolution 96(1) urged states to develop a convention to prevent genocide. The resolution's preamble compared genocide to the murder of individuals, emphasizing that the denial of existence of entire human groups not only violates moral law but also causes significant losses to humanity in terms of cultural contributions

It is important to note that as the proposed provision for reparations did not make it into the final Convention, there exists what some scholars refer to as a "reparation gap" - a criminal prohibition on genocide without the accompanying reparations.
The narrative of cultural genocide in the late 1940s cannot be fully understood if we only focus on criminal law.
By broadening our perspective to include the efforts of genocide victims in seeking restitution through private law, a different story emerges. Some scholars have recently emphasized the role of restitution, including the restoration of property to individuals, in the process of rehabilitating groups that have experienced genocide.

made by these groups. Although the explicit reference to protecting against cultural genocide was not evident in the resolution, the subsequent draft prepared by the UNGA Secretariat included a specific provision prohibiting cultural genocide. This draft, prepared with input from international law experts Henri Donnedieu de Vabres, Vespasian Pella, and Raphael Lemkin, identified eight techniques of genocide categorized as physical, biological, and cultural. Notably, among the experts, only Lemkin supported the inclusion of cultural genocide, while the others believed it was covered by the former protection of minorities.

In a later draft prepared by the ad hoc committee on genocide, a separate article was dedicated to cultural genocide. This tactical decision aimed to facilitate progress by addressing cultural genocide separately. However, the scope of this separate article was limited to protecting the material products of culture, such as libraries, museums, schools, monuments, and the group's language. This change implied that cultural genocide was no longer perceived as an integral part of genocide but rather focused on safeguarding cultural artifacts, thus downplaying its significance compared to physical and biological genocide. Consequently, states argued that the appropriate venue for protecting culture was within human rights instruments rather than a convention for preventing genocide. As a result, the provision prohibiting cultural genocide was eventually removed from the final version of the Convention.

Discussions held by the Sixth Committee on 25 October 1948 highlighted the stark divide between those in favor and those opposing the inclusion of cultural genocide in the Convention. Supporters argued that a group could be destroyed by eradicating its cultural foundations, and that cultural genocide is often intertwined with physical genocide or serves as its precursor. Excluding cultural genocide from the Convention could hinder efforts to prevent physical genocide. The Pakistani delegate even expressed the view that cultural genocide was the ultimate objective, while physical genocide was the means to achieve it. Conversely, those objecting to the inclusion believed that cultural genocide belonged in instruments protecting minority rights, such as provisions for freedom of expression in national constitutions and civil codes, or within the protection afforded to language, religion, and culture as outlined in the Universal Declaration of Human Rights.

The initial drafts of the Genocide Convention prepared by the UN Secretariat included a provision (Article 13) that obligated state parties to provide reparations to victims of genocide. This provision, however, was eventually removed from the final version of the Convention. Nonetheless, it is important to consider the significance of this provision, particularly in relation to understanding cultural genocide. The last version of Article 13, dated 26 June 1947, stated that when genocide is committed by a government or sections of the population in a country, and the government fails to successfully resist it, the state should grant redress to the survivors of the victimized group as determined by the United Nations.

The UN Secretariat acknowledged that this provision deviated from the principle of individual guilt by holding the entire population of a country responsible for the crime of genocide committed by their government. However, it justified this deviation by stating that the liability was civil in nature and reflected the principle that populations bear some responsibility for crimes committed by their condoned or allowed government. The comment further explained that the redress could include addressing the group as a whole and involve the reconstitution of the group's moral, artistic, and cultural heritage. This initial link between reparations for genocide and the cultural aspects of genocide is noteworthy, particularly when considering the struggle of Jewish organizations to seek redress for the cultural genocide endured by the Jewish people in the aftermath of World War II.

It is important to note that as the proposed provision for reparations did not make it into the final Convention, there exists what some scholars refer to as a "reparation gap" - a criminal prohibition on genocide without the accompanying reparations. The narrative of cultural genocide in the late 1940s cannot be fully understood if we only focus on criminal law. By broadening our perspective to include the efforts of genocide victims in seeking restitution through private law, a different story emerges. Some scholars have recently emphasized the role of restitution, including the restoration of property to individuals, in the process of rehabilitating groups that have experienced genocide.

After World War II, Polish and Jewish organizations collaborated in gathering evidence for the Soviet-backed State National Tribunal (SNT) and the Nuremberg trial, as both groups saw themselves as victims of group persecution. However, their paths diverged when it came to the issue of restitution. Jewish organizations viewed the Poles as collaborators with the perpetrators of genocide and as beneficiaries of their expulsion. There was an initial attempt, supported by the Soviets, to revive the Jewish community in Poland by establishing Yiddish-speaking institutions. However, as Jewish victims started returning and demanding the restitution of their property, including land and houses that had been seized by ordinary Poles, violent anti-Jewish attacks escalated, culminating in the Kielce pogrom of 1946. At this point, Jewish organizations came to the realization that there could be no restoration of Jewish life in Poland.

The fate of Jewish cultural restitution after World War II was a complex and challenging issue. Jewish organizations sought to address the issue of heirless property, particularly in the context of cultural genocide, and the need to adapt existing international laws and frameworks. They aimed to apply private property and restitution laws to address the crimes committed against Jewish communities.

In 1945, a coalition of five Jewish organizations established the Jewish Restitution Successor Organization to specifically deal with the restitution of Jewish property, both private and public. This organization supported the efforts of another organization called Jewish Cultural Reconstruction, which was recognized by the United States military government in 1949. Jewish Cultural Reconstruction was responsible for collecting and redistributing

Jewish cultural property found in the American zone of Germany. The Jewish organizations faced a significant challenge due to a gap in international law regarding heirless property resulting from genocide. According to existing rules, such property should be returned to the state of origin. However, there was a concern that Jewish heirless property would be returned to the states that participated in the persecution and plunder of the Jewish victims, including the successor states of the Third Reich, such as Germany.

The Jewish organizations argued that in response to the collective crime of genocide targeting the Jews, the Jewish people as a whole should be granted collective claims to heirless individual property, as well as to the destroyed Jewish communities and institutions. However, there was no existing precedent in international law to recognize "the Jewish people" as a legal entity with a right of succession that could supersede the claims of territorial states.

Overall, the issue of Jewish cultural restitution involved complex legal and moral considerations, as well as the need to navigate the challenges of international law and the aftermath of the Holocaust. Efforts were made by Jewish organizations to address this issue and ensure that justice was served, although the recognition of "the Jewish people" as a legal entity under international law remained a significant obstacle.

In contrast to the struggles for restitution in the 1990s, which focused on the concept of private property, the Jewish restitution efforts in the 1940s aimed to introduce a collectivist perspective, viewing restitution as a response to genocide. This required establishing a connection between cultural genocide and collective restitution. Two influential books published in 1944, Siegfried Moses's "Jewish Post-War Claims" and Nehemiah Robinson's "Indemnification and Reparations: Jewish Aspects," laid the foundation for this collectivist approach to Jewish cultural restitution and reparations.

Ultimately, Jewish organizations succeeded in becoming trustees for heirless cultural property and distributed it in a manner that symbolized the renewal of Jewish culture. This involved shipping cultural artifacts, books, and religious items to new and revitalizing communities in Israel and the United States. However, the significance of this struggle has largely faded from historical memory and the legal landscape, which has increasingly focused on art restitution based on private property since the 1990s.

This omission was not accidental, as the Allied powers held divergent views on the meaning of restitution and were reluctant to establish a precedent in international law. Consequently, cultural restitution was achieved through ad hoc agreements rather than a comprehensive and principled solution or international treaty. As a result, collective cultural restitution came to be regarded as a political and moral issue rather than a strictly legal one. Consequently, international law did not fully incorporate the legacy of recognizing victim groups as subjects in international law, and this omission continues to be apparent in the struggles of indigenous peoples for the recognition of cultural genocide and reparations, where state control remains significant.

Another instance where this oversight is apparent is in the treatment of Salo Baron's testimony during the Eichmann trial. Despite being a forgotten figure, Baron's account of his work on cultural restitution, in conjunction with "Dr. Arendt," lacks context without an understanding of the post-war efforts of Jewish Cultural Reconstruction, an organization he founded and directed. However, in the late 1940s, Baron's organization played a crucial role in influencing a shift in American restitution policy.

Baron's organization argued that due to the extensive destruction of Jewish life and property by the Nazis, the reconstruction of Jewish cultural institutions could not simply involve mechanical restoration to their original forms or locations. Instead, they advocated for the development of new forms better suited to the emerging post-war European landscape. They also envisioned the redistribution of Jewish cultural treasures to align with the new needs of the global Jewish community.

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In this paragraph, Baron skillfully combines the concept of cultural genocide with an understanding of culture as a dynamic and adaptable force capable of renewal in the aftermath of genocidal attacks. This dynamic perspective on culture underscores an important distinction between the tracks of criminal law and civil law. Baron's views on cultural genocide, which were dismissed during the Eichmann trial as undermining the Israeli prosecution, were transformed, within the context of the restitution struggle, into the foundation of an ambitious program for cultural reconstruction beyond Europe.

Furthermore, the Jewish organizations that were not officially recognized as representatives of the Jewish people in the Nuremberg trials found success in the restitution struggle, gaining recognition as subjects of international law and actively shaping its future by reclaiming their cultural heritage.

As discussed the ICC's judgment in the Al-Mahdi case. Recently, the ICC issued a reparations order that highlights the Court's attempt to recognize the connection between protecting culture and protecting groups. Similar to the approach taken by Jewish organizations in the 1940s, the order prioritizes collective reparations over individual compensation, acknowledging that culture extends beyond harm to individuals. However, this well-intentioned effort faces a inherent tension between individual victims and the groups they belong to.

The Jewish organizations advocated for collective reparations as a response to group-based crimes. In contrast, the ICC, limited to prosecuting war crimes (excluding cultural genocide), had to incorporate collective reparations within an individualistic framework that prioritizes individual victims. This tension is evident in the reparations order. While recognizing that the harm inflicted was largely collective, the Court realized that awarding solely individual compensation would not fully address the actual harm or the threat posed to the community. Therefore, a hybrid solution was devised: individuals who directly suffered exclusive harm are entitled to individual compensation, while broader groups of victims are entitled to collective reparations, which could involve rehabilitating the protected buildings and the community of Timbuktu.

However, the group-based approach undermines the internal logic of the Rome Statute. It raises concerns as to why an individual victim should bother filing an application when there is no guarantee of any benefit. Additionally, the Court struggled to align the criminal mechanism with the restorative goal of restitution, especially since the United Nations Educational, Scientific and Cultural Organization had already rebuilt the buildings in 2015 without seeking compensation. These efforts by the Court reflect a growing awareness of the limitations of international law regarding cultural genocide.

Our study aligns with the perspectives of international law scholars who recognize the significance of cultural genocide in connecting public international law to struggles for restitution. It calls for a reevaluation of the current individualistic framework in discussions on cultural restitution, urging a return to earlier insights that viewed it as a response to cultural genocide and sought to empower groups in their fight against it.

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Cultural Genocide placed in perspective

As a storm uproots trees and locusts devastate a crop of rice, the lived life, the way of life that identified Kashmir was destroyed by Yavanas, that means the Muslims.

Dr. Dileep Kumar Kaul
Director, JIGAS

Cultural genocide was included in the initial drafts of the UNGC. But the powerful countries played their games and broke the concept of genocide into two concepts of physical and cultural genocide. Then it became easy to and get cultural genocide removed from the convention. As cultural genocide is constantly being used to break the connections of man with his place, history, art and thought which makes his physical annihilation easy and without any resistance, it becomes our duty to place the crime of genocide in its cultural perspective. Man is biology and culture both. Destruction of one destroys both. Attacking the culture of a human collective and imposition of his perspective by the perpetrator may make the whole collective to convert to perpetrator's line of thought and erase his existence from the face of earth. So we need to take a new look on the phenomenon of cultural genocide.

If we take Jonaraja, the originator of genocide studies, his concept of genocide involves the whole existential perspective of man. He defined genocide as **deśācārā dhvaṃs** In the following verse of his Rajtarangini he explains genocide as root and branch destruction of de c r, the place behaviour that is the product of the lived life of people dwelling in Kashmir.

marudbhiriva vṛkṣāṇāṃ śālināṃ śalabhairiv |
kaśmīra deśācārāṇāṃ dhvaṃsoatha yavanaiḥ kṛtaḥ || 575

(As a storm uproots trees and locusts devastate a crop of rice, the lived life, the way of life that identified Kashmir was destroyed by Yavanas, that means the Muslims).

He did not separate the cultural existence from man from his biological existence. All activities of man are performed in **deśa,** the place through his body. The sum total of such activities of the dwellers of place constitutes **deśācār.** This **deśācār** or place behaviour constitutes the place identity of man. Scholars have explained place identity as the extent to which a person feels that his dwelling place defines who he is and makes him different from other people who live at that place. Here comes the cultural perspective of man. His biological existence makes him act in the place he lives and that goes on adding to the quality of place and his own existence, biological and spiritual. For Jonaraja, genocide or **jātividhvaṃs** (verse 605, Rajatarangini) involves the annihilation of both biological and cultural existence of man.

Raphael Lemkin also held the same view. In his famous work "Axis Rule" he explained genocide as a coordinated plan of different actions aiming at the destruction of essential foundations of the life of national groups, with the aim of annihilating the groups themselves. Such a plan destroys everything from political and social institutions, culture, language, religion up to the lives of the individuals belonging to such groups. That is what Jonaraja calls the destruction of **deśācār.**

It is apt here to understand the thinking behind the word "Genocide." The word was coined by Raphael Lemkin. All genocide scholars and books on genocide tell us that the word "genocide" was created by combining Greek "genos" (race, tribe or nation) and Latin "cide" (killing). But Lemkin had taken the meaning of "genos" from three ancient and glorious cultural traditions—Greek, Indic and Roman. In his autobiography titled "Totally Unofficial" Lemkin makes it clear that the Roman "genos", the Greek "genos" and the Sanskrit "genos" are basically the same social unit in which the spirit of a group grew and a specific way of life developed. He further emphasised that other ancient societies also had the same social units. Lemkin wanted to infuse the word "genos" with a universal vitality to take it beyond the confines of history and politics of different nations. But the politics of nations had the final say.

"Genos" for Lemkin was the result of the group vitality of the collectives that constituted Greek, Indic and Roman civilizations. When Jonaraja used the word **jātividhvaṃs** for genocide what he meant by **jāti** was the social vitality of the group:

jātidhvaṃse mariṣyāmo dviješviti vadatsvatha |
jātirakṣānimittaṃ sa tāndurdaṇḍamajigrahata|606

The Brahmins said that they shall die if their **jāti** is destroyed, that means they are converted to Islam. They were told that if they want to keep their jati they should pay the fine, that is Jaziya.

If **Jāti** is taken away it is death. Jati, the ethnoreligious identity, the cultural perspective is life, the social vitality of the community. This social vitality is expressed in **deśācār** or place behaviour. So **deśācāra dhvaṃs** is **jātividhvaṃs.** The destruction of place behaviour is the destruction of **jāti,** the destruction of place identity which is the ethnoreligious identity. So Jonaraja also is very clear about the fact that cultural genocide is death. Here the victims have been selected on the basis of their social group identity. We are made to remember the words of Claudia Card, the eminent philosopher who developed the theory of genocide as social death, that when the victims of genocide are selected on the basis of social group identity, it is not just the physical life of victims that is the target of the perpetrator but the social vitality that operates behind the identity.

What is social vitality? It is cultural vitality that is created through relationships, contemporary and intergenerational. This gives meaning to life and creates an identity. In a genocidal situation, all relationships are

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Perpetrators have also used music and songs to establish cohesion in their group. In 1990 wave of genocide in Kashmir, professionally done songs were played in all the mosques of the valley. The songs called upon the Kashmiri youth to take up arms and be ready to sacrifice their lives in the battle against the infidels. These songs in their essence made a call for genocide. Simon Bikindi, a prominent Rwandan singer was convicted by ICTR for his songs that incited genocide. Rwands had a strong oral tradition and Bikindi's songs had an amplifying effect on genocide. Rwands had a strong oral tradition and Bikindi's songs had an amplifying effect on genocide. Similarly Nazis expanded their effect through songs like Hitlernationale that called upon the people of Germany to be ready for the racial battle.

threatened, the relationships with the past, with the present, with heritage and history. Your own people are killed. You have to flee the place to save your life. Though you may still retain the memory of heritage, festivals, social relations, you cannot participate in the social acts associated with them. As per Claudia Card if you cannot participate you do not have the social vitality but the memory of it. And when it goes to your children you tell them about the social vitality that was the characteristic of the community. So, their memory of the place of origin and the social vitality associated with it, is retained by them on the basis of your memory. This is what young genocide scholar Nitin Dhar calls "memory of memory." Such memory of memory is not sufficient to produce vital connections to the heritage.

But for a victim community, there is no way but to pass on this memory of memory. That need was felt in the 1990 wave of genocide perpetrated on Kashmiri Pandits. Songs and music have been used by the perpetrators as well as the victims of genocide to forward their goals. The song of Kashmiri Pandit genocide "Asi Chu Tarun Kashmir" (we have to go back to Kashmir) was composed by the eminent Hindi Poet Dr. Agnishekhar. It had in it all memories of religious, cultural and ecological heritage including the genocidal history. It was sung at almost every Kashmiri Pandit gathering, even in marriages. It is still sung by Kashmiri Pandits all over the world. It is a song that still establishes connects the victim community with the lost homeland.

The use of this song makes it clear that cultural identity is as important for a community as its physical existence. Other victims of genocides have also used songs and phrases to retain their social vitality. The phrase "L' Shana Habaa B'Yerushalayim" (Next year in Jerusalem) is sung by Jews at the end of Passover Seder throughout the world. Passover is a Jewish festival that celebrates the story given in Bible in which the people or Israel escape from slavery in Egypt. Seder is the feast arranged on the occasion. This phrase appeared in a Hebrew poem written by12th century Spanish poet Yehudah Halwi. Jerusalem is with Jews now but the song has become the song of the need to protect Jerusalem and Israel.

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But the question still remains that what makes a perpetrator to kill people with whom he had no grudges or did not even know them? What makes him to lose his cultural identity. Before a genocide is committed the frontline killers are common people with the same everyday struggles as the victims. What makes them kill the victims? Jonaraja has the answer:

turuṣkadarśane bhaktyā na tu dveṣena sa dvijāna |
vyaplāvayadataścāsmina hatvā na prajagalbhire | |670

This verse is about Suhabhatta, a Kashmiri Pandit who after converting to Islam killed and tortured the Brahmins who were the members of his own community. It was only because of his devotion towards turu kadar an, the Islamic ideology that he resorted to atrocities against Brahmins and got no load of sin because he had been a Brahmin himself he had no malice towards them. Radicalising ideologies can very effectively cause social death. The converted people always try to repress the consciousness of their origin folk. That is why they want to annihilate them through conversion or murder.

As per Claudia Card, when a group with its own cultural identity is destroyed its survivors lose their cultural heritage and may even lose their intergenerational connections. Then they have nothing to do with passing along and building upon the traditions and projects of earlier generations. That is how communities have been annihilated all over the world. Residential schools for indigenous children in North America were established to ensure social death of the indigenous communities. Native American boarding schools were established by the US government where the children were forced to speak English, study standard subjects, attend church and abandon tribal traditions. These were the schools, the education centres to bring about social death, the cultural genocide of the native Americans.

The cultural centres like educational institutions to cause annihilation of the native communities, were used by the very countries that played games to keep cultural genocide away from the genocide convention. Unless these political hypocrisies are checked genocides will continue, in one form or the other.

Cultural Genocide of Kashmiri Pandits

The process of cultural genocide is not a sudden event but evolves over a long period. What happened in 1989-90, and thereafter, was the culmination of a mindset that viewed us as villains, who were the cause of all the real and imagined problems of the majority community.

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Shrill screams rent the air, while an unruly mob descends on our colony in Srinagar, Kashmir. “Bhattan Hund Byol Khudayan Ghol” (May God annihilate Kashmiri Pandits) shouted the crowd, laying bare its genocidal mindset. The humiliating cries were unnerving, but what troubled us most was that God Himself had been dragged into the mayhem. His name was being invoked to seek the wiping out of a defenseless minority. The turbulent period of 1989-90, saw a genocidal agenda being clinically executed by the separatists, while the government of the day seemed listless. Notably, this ethnic cleansing and cultural genocide of Kashmiri Pandits was not a one-off event, but just the latest in a series of genocides our community faced, after Valley fell into the hands of Sultans in the 14th century CE. Coming back to the ethnocide of 1989-90, what sets it apart from the previous pogroms was that it came about not during the tyrannical rule of some bigoted Sultan but under the very noses of supposedly secular dispensations ruling the state and the country at the time. That a modern nation-state with a well-laid-out constitution would look the other way, and allow such a calamity to transpire, is deeply disturbing and calls for serious introspection on the part of the Indian nation.

The process of cultural genocide is not a sudden event but evolves over a long period. What happened in 1989-90, and thereafter, was the culmination of a mindset that viewed us as villains, who were the cause of all the real and imagined problems of the majority community. After 1947, the neglect of our cultural heritage—the 5000-year-old native culture of the Valley— started in right earnest. The Pandits got used to the harassment meted out to them but deep inside they felt unwanted in the land of their ancestors. There was one party engaged in bullying while the other just kept silent and didn't retaliate; unfortunately, this was misrepresented at the national level as the peaceful coexistence of communities—and the façade of Kashmiriyat was built around this uneasy peace. Kashmiri Pandits excelled in education and were instrumental in its spread in the Valley. However, discrimination in admission to professional courses and in getting employment forced many Pandit youngsters to leave the Valley much before 1989-90. This was a deliberate and sophisticated way of getting rid of the infidel. It was non-controversial, but slow. The fanatics among the majority community were not satisfied, so a fast but brutal method was adopted from 1989 onwards—threats, targeted killings and rape. This sent shivers through the Kashmiri Pandit community, particularly when the neighbours pleaded helplessness or in many cases colluded with the killers. The betrayal and killing of BK Ganjoo in a rice drum is a case in point. The administration's inaction left no choice for this hapless community but to leave their homes behind and live as refugees in the rest of the country. The neighbours eyed the abandoned properties of Kashmiri Pandits, some illegally occupying them while others bought these at throwaway prices from the beleaguered owners. Many temples were desecrated and burnt down and the land was illegally grabbed. The forced exodus of Kashmiri Pandits, appropriation of their properties and destruction of their cultural heritage were all aimed at eventually wiping out the culture of an indigenous population, to be supplanted by a supremacist worldview. Kashmiri Pandits, the torchbearers of the ancient native culture of Kashmir, are no longer on the scene, and many youngsters among the majority community may not have any idea of the rich traditions of these natives. This poignant reality is borne out by an incident that I came upon during the research for my book on the Kashmiri Pandit genocide. At a historical site in the Valley, where the ancient temples are in a state of neglect, my uncle found a young man talking over his mobile, with one foot casually on a Shivling. Unmindful of the sacrilege, he removed his foot only on being reprimanded. This is what cultural genocide has achieved: the erasure of the past native culture from the collective memory of the people in the Valley.

Cultural genocide constitutes acts and measures undertaken to destroy the culture of an ethnic group through spiritual, national, and cultural destruction (www.genocide-museum.am). The unmistakable similarity of this description to what transpired in Kashmir over the last three and a half decades makes it mandatory for the government to constitute an inquiry commission and fix responsibilities to punish the perpetrators of the Kashmiri Pandit genocide. Since no such action has been taken to date, it would be naïve to leave the matter in the hands of the administration. The way forward for the victims is to establish mechanisms that ensure our story reaches not only the masses but also the academia. There will be naysayers who will question the usefulness of this line of action, but we must persist. Assuming the illusory inquiry commission does materialise, it won't be enough. History of various ethnocides has shown that many perpetrators escape punishment despite an extensive inquiry. In the case of Kashmir, even if the main players are held accountable, what about the Valley's society at large? Its role in the cultural genocide of Kashmiri Pandits is undeniable. The terrorists killed and raped but it was the common man who overtly or covertly supported them. Terrorists cannot operate without assistance from the local population. In addition, there is now an effort to deny our genocide by making use of all sorts of ploys: calling it propaganda, falsely equating it with the sufferings of the majority community (even though all Kashmiri Pandits were killed by a Muslim terrorist but not a single Kashmir Muslim was killed by a Pandit), putting the blame on others (such as Governor Jagmohan) and simply not making any mention of it in the conflict-related literature coming out of the Valley. Recently one tourist told me that on a visit to the ruins of an ancient temple she questioned the guide about the destruction she saw there, the guileful man lied, blaming an earthquake. Surely Sikander Butshikan must be pleased with his henchman.

The victims of the genocide must ensure they extensively document their accounts. In another few decades all the eyewitnesses will pass away, so it's our responsibility to leave behind these records for posterity. It could be a simple article written in a magazine or a well-researched book or establishing institutions that do academic-grade research on the subject. A rigorous scientific approach to documentation can go a long way in increasing its acceptability. Finally, let us not belittle any effort in this direction. Instead, support it wholeheartedly. Let me rephrase what our scriptures say and what Swami Vivekananda popularized: Arise, awake and stop not till the world listens. This we have to do for our martyrs, for posterity and for all vulnerable communities—above all to prevent future genocide.

Cultural Genocide Of People Of East Bengal

Jonaraj, a Kashmiri historian and poet of the 15th century defined ethnic cleaning and cultural genocide as "Jatividhwansa". In this paper I discuss how cultural genocide happened to the people and culture of East Bengal by taking specific historical examples.

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Genocide Scholar

What Is Cultural Genocide?

Cultural genocide is the systematic destruction of traditions, values, language, and other elements that make one group of people distinct from another . Richard Lemkin, a Polis Jew defines cultural genocide as, "barbarity, conceived as oppressive and destructive acts directed against individuals as members of a national, religious, or racial group, and the crime of vandalism, conceived as malicious destruction of works of art and culture because they represent the specific creations of the genius of such groups." Jonaraj, a Kashmiri historian and poet of the 15th century defined ethnic cleaning and cultural genocide as "Jatividhwansa". In this paper I discuss how cultural genocide happened to the people and culture of East Bengal by taking specific historical examples.

Cultural Genocide Of Hindus in East Bengal: A Historical Background And Noakhali

In 1946 cultural genocide was conducted on the people of East Bengal via ethnic cleansing, conversion, and iconoclasts. To understand this, a brief history of the ethnic cleansing of Hindus in Bengal needs to be understood. On August 16th, 1946, Muslim League called for "Direct Action Day" to obtain Muslim "homeland" Pakistan via violent means. "Pakistan" would include large parts of Bengal and Assam in the East and Punjab in the West. Looting, killing, and arson happened in different parts of Calcutta, supported by the Muslim League Government of Suhrawardy (Sinha and Dasgupta, 2011). Although Hindus were the first ones to get assaulted, later they were able to retaliate. The news of that Hindu killings was avenged, and Muslims were killed reached other parts of Bengal (Sinha & Dasgupta, 2011). This led to violence against Hindus in the Muslims majority East Bengal, particularly Noakhali under the leadership of the Islamic cleric, Pir Golam Sarawar Hossaini . Pir Golam Sarawar gave a call for Jihad against the Kafirs:

"Alhamdulillah's, Eid is happening in dark times. The Quran came into existence during this holy month of Ramadan. So, Allah gave permission to wage Jihad during this month of Ramadan. During this month of Ramadan the battle of Badr was fought. In this war the Prophet fought against a thousand Musrik with 313 Momems (Muslims). Again, during this holy month of Ramadan, the Prophet, messenger of Allah, with ten thousand Muslims won over the holy city of Mecca and established heaven on earth. It is the good luck of the Muslims that they have started Jihad for Pakistan in this month of Ramadan. The sad thing is that in the first stage of this Jihad we have been beaten by the Musriks. Now it is being heard that the (H)indus are bringing the Sikhs from Punjab to only to kill the Muslims" (Mukherjee, 2023).

This speech incited violence against Hindus as it was seen as a duty of all Muslims to destroy Hindus. On the day of the Eid Afjan and Karimullah attacked the house of Taraprassana Guha, a Hindu Talukadar . Deviprasad, elder son of Taraprassana, was killed in this attack because he built a Congress office with tin roof on a 8 acre plot. After this gold merchant Chandrakumar Karmakar was attacked. Chandrakumar was coming home on the day of Eid. Latif Sheikh and his gang stopped him on the way. Latif had taken a loan of about Rs 150 from Chandrakumar. But Latif did not pay back the capital or interest. There was a heated argument about this between him and Chandrakumar a couple of days ago. Seeing Chandrakumar Latif started verbally abusing him by calling him, "Son of a bitch Malaun ". Chandrakumar tried to flee. But was captured by Latif and his gang. Torop Sheikh, who was in his mid 50s came with a sword, and Abid Sheikh said from the side, "Imam Saheb said, to cut a (H)indu is the same as cutting a goat, if you can cut him open." Muhammed Halim said to Torop, "In Calcutta the (H)indus murdered my brother-in-law. I will take revenge for it now." Torop Sheikh said, "Allahu Akbar" and brought down the sword on Chandrakumar's neck. (Mukherjee, 2023).

In a subsequent meeting Golam Sarawar met with the National Guard and further excited Muslims in the "holy war against infidels." In a deep thundering voice, Golam Sarawat started saying, "This nation will be Pakistan. No son of a bitch Malaun will remain in this country. All will have forced to recite the kalima by pointing the spear at their chest. Pakistan means dar-ul-islam. There not one Mushrik (H)indu will remain. All will be circumcised. You guys have a lot of work now. Record the names of all the (H)indus around you. Also, take note of what temple which house has, smear all the houses with cow blood. If you can break them, do so. The idols will have to be broken first. Then urinate on top of them. Marry the Hindu women and then make them read Kalima. Decide who will marry whom. And decide how many will be killed." Abu Bakr present in the meeting said, "Whom will we finish, your honor" In response Sarwar said, "Finish all those who resist". Further, Golam Sarawar said,

"We still have a months' time. We must wage Jihad in all the zillas. We must watch to see that no one flees from the village to the city. We must destroy the roads and bridges. We must see that the (H)indus do not get a boat to escape. Then we will take all their wealth, paddy-rice, cow-calves. We must hold a spear to their chest and force them to read the Kalima. Marry their women. If you do not want to marry their women, then take them to your bed." Abu Bakr asked in the context "What task do you allot us this moment?" To this Pir Saheb answered, "Make a list of all the villages under this police station. Then make a list of all the Hindu names and their occupations. Then make a list of all of you who want to participate in the action. Then decide according to the list who wants to work where. Of course, there is the question of how to get finances. We need a lot of kerosene to douche the (H)indus in fire." Saying this Golam Sarawar came out of the guard's room.

In 1946 cultural genocide was conducted on the people of East Bengal via ethnic cleansing, conversion, and iconoclasts. To understand this, a brief history of the ethnic cleansing of Hindus in Bengal needs to be understood. On August 16th, 1946, Muslim League called for "Direct Action Day" to obtain Muslim "homeland" Pakistan via violent means.

On 6 September in Sahapur Bazar near leaders of Muslim League held a meeting. Maulana Sajiruddin, Maulana Abu, Barkat Chaudhury, Maulana Hafiz Ahmed Sarif, Maulana Imadul Haque, Maulana Karim Zakaria, Maulana Abid Sardana, Maulana Ifran Javed, Maulana Akil Sairani, Sheikh Jahiruddin, President of Muslim League, Vice President Sheikh Mujibar Rahman, Vice President Janab Haji Ishpinadiya, Secretary Janab Taher Abdulla, Vice President Janab Muhammed Osman, Taher Abdulla, Zilla President of Muslim National Guard, Pir Golam Sarawar were all present in that meeting. The Pir started to talk to Mujibar Rahman. Rahman Saheb said, “We must wait till the big puja . I looked at the calendar everyone will stay in the village till the Laxmi Puja . Jumma day is the day after Laxmi puja. We will call for Jihad on that day.

Muslim League supporters Hafex, Abdul High, Rakib, Fazal, Naoshad, Khodabasque, Adil, Mansoor, Abu Taraf and others started to go towards Kusumpur. On their way they observed that the daily offerings to Goddess Kali were being carried on in the Kali temple of Sushil Chakravarty. Sushil Chakravarty was ringing the bell and offering food to the Goddess. His grandson Aurobindo was beating the bell drum. The maid Chapa was blowing on the conch shell. The looters entered. The black stone one and half feet idol of Kali was kicked and thrown on the floor. The two hands of the idol were broken, some pushed it and threw it on the floor. The two forehands of the idols were broken. They were laughing and dragged the idol through the fields and urinated on it. Seeing the condition Sushil Chakravarty pulled his grandson from the temple and fled.

On 8th September Rakib's soldiers started going towards Sahapur. There was Vikash Saha's house on the way. Nearly 300 looters gathered in the market of Sahapur and started looting the shops of Ratan Nandi. After this they attacked the molasses shop of Subodh Saha. After Rakib gang left another gang appeared. Hayderpur, Tekhali, Khalishpur, etc. They came from different places, they robbed the rice shop of Dulal Saha. Around two in the afternoon another gang came from Sankhchura. They started looting the gold shop of Jaynarayan.

The supporters of Muslim League started continuous torture. One hotel conductor, Jaminibabu was killed near Ghoshbag. The fishermen were attacked near Charruhiya. In Chandraguccha area Kaminikumar Pal and Jadavchandra Pal's shop were looted. In Munshi bazar all the shops were looted. In Raypur the idol inside Haren Ghosh's house was desecrated. Pieces of meat were thrown inside the temple. The Shiva Temple inside Dr. Jadunath Majumdar's house, Chandipur was destroyed. Widespread desecration of idols was done inside Nagendranath Majumdar and Rajkumar Chaudhury's family idols. In Kankirhat Hindu shops were looted. In Anuchar are 6-7 Hindu families all the property were looted. In Karapa Jadav Majumdar's house was attacked and Rs 1500 taken away. All the shops belonging to Hindus in Taj Muhammed market were looted. In Sahapur bazar several Hindu shops were looted. The idol of Goddess Durga was sacrificed. Prasahuram's house in Tatar Mill was attacked. The Durga idol in their house was destroyed. All the Durga idols in Kheturi, Markachar, Angrapara were destroyed. In Nandanpur the idol in Subalchandra Banik's shop was looted. The slogans of the attakcers were “Allahu Akbar”, “With sword in hand, song in the mouth, we will take Pakistan by force”. “Pakistan Zindabad”, “Muslim League Zindabad”, “We want to avenge Calcutta” (Mukherjee, 2023).

The most gruesome happening happened on 10th October during the Kojagari Laxmi puja. Rajendralal Babu was the zilla President of the Hindu Mahasabha. Sarawar had a personal vengeance towards Rajendralal. He was the zilla President of the Hindu Mahashabha and complained against Sarowar several times to the police and he was the advocate for his brother's lawsuit against Sarowar. Under this condition the monk Tryambakayananda came to the house of Rudralal Roychaudhuri in Karpara. He asked Rajendralala to arrange for a yajna (Mukherjee, 2023).

On October 10 nearly 1500 Muslims were present where Golam Sarowar and other leaders of the Muslim league were present. They shouted together, “Allahu Akbar. Pakistan Zindabad. We will take Pakistan by force. Quade Azam Zindabad. Dayra Pir Zindabad.” Tofajjol of Muslim League went near the microphone and said, “The Pir of Dayere is here. Our meeting will start soon; first our Quoresh Mossed Imam Syed Tajuddin will say a few words” (Mukherjee, 2023).

Tajuddin Sahed came near the microphone. He started saying, “Alhamdulillah's! All Muslim brothers, our Islam is like a silk thread. A sacred binding. That sacred binding is the worship of one Allah. If we do not pray to the one Allah, then we will be burnt in hellfire. Everyone was originally Muslim, and slave of Allah. Then some people forget that they are slaves of Allah. They took other religions. Those who have gone far from Islam, must be returned to Islam. The path to this return is Jihad. This country of ours is filled with Musrik. Musrik have to be converted and brought to the true path of Allah. The Quran says the following regarding this: “After this when the month of Haj is over, annihilate the idolators where you find them, catch them and surround them and reach every place for their destination, later if they de-arm and pray, and give zakat, then give them way, certainly Allah is forgiving and compassionate.” (Mukherjee, 2023).

“ The Musrik kafirs are swarming all around you. Instead of letting them be burned in hellfire, it is your sacred duty to convert them. Everyone must believe in Allah's goodness. Today they will worship Laxmi, tomorrow, Goddess Kali, and the day after that Goddess Saraswati. This is not good news. This is the way to hell. Tomorrow is Jumma day, start your work from tomorrow. Make the Musrik (H)indus read Kalima, feed them beef. To make every (H)indu read kalima your path to heaven is guaranteed. Start your duty now.” (Mukherjee, 2023)

A rumor was spread that the landlord (zamindar) of Narayanpur, Surendranath Basu, sent a telegram to get Sikh soldiers to help Hindus. After this hooligan attacked the Sahapur bazaar and started looting stuff. Their attack was conducted on Hindu fish seller, betel leaf sellers and molasses sellers and the temples (mostly Kali and Sitala temples) were destroyed (Mukherjee, 2023).

After this the hooligans divided into three directions. One of the branches went north west near Ramgarh bazar. Another went to Dasgharia bazar and looted shop after shop belonging to Hindus. After looting they set fire to the shops. And the third party went to the Courthouse (Kachari) of the Zamindar or landlord's house in Narayanpur under the leadership of Kasem and Akbar, the two assistants of Sarowar. They had lethal weapons in their hands. At that time Landlord (Zamindar) Surendranarayan Basu was present

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with some of his employees. Suddenly they heard a commotion. Surendranath was startled. Quickly he closed the front gate and went upstairs. He took his double barrel gun. He peened and saw a huge crowd of black locust running on the red stones. All of them had white caps on. They had sticks, spears, knives by which cows are cut, swords, and shouting" Allahu Akbar, we will take Pakistan by force, Quede Azam Zindabad". Lokesh, an employee of Surendranath Basu, Ahricharan and Bhudar and his cook Jatin Oja were scared and hid under a four-legged wooden bed downstairs. The commotion outside was increasing. The crazy crowd went quickly near the court house. They tired to break the main door. But as the door was heavy it would not break easily. Surendranath Basu fired two shots at the sky. But that did not scare anyone. The crazy crowd roared, "Allahu Akbar, killed the Malaun son of a bitch". Quickly Surendranath loaded his gun. He fired aiming at the crowd, it hit the shoulder of one man, and the feet of another. The crowd shouted, "Careful Brothers, that bastard is firing." (Mukherjee, 2023).

The gang started gathering hay in front of the main door. There was a heap in front of the door is a couple of minutes. They poured petrol and lit it on fire by Kasen's army. Surendranath decided that he would first kill a couple of these barbarians before he dies. The fire was burning and Surendranath leaped on the fire with his gin. But someone's spade the gun slipped from his hand, and someone's stick hit his forehead. Surendranath saw dark and several jumped on him and put a sword through his heart. After he was killed his severed heard was presented to Sarowar. Lokesh, Arjun, Haricharan, Bhudhar, and Jatin Oja were gruesomely killed and their corpses thrown in the fire (Mukherjee, 2023).

When the mad crowd was dousing fire in Surendranath's house then Golam Sarowar was proceeding towards his own house in a Jeep. On his right was Gaffar. The hooligans were following him. On the way there was Debnath's house .Nishkanta Debnath was a weaver by trade. There was an idol of Radha Madhav in a haystack in front of his house. The hooligans focused their attention on the idol. Seeing the crowd, Debnath's family had fled to the forest and taken refuge. The crowd entered their house and occupied it. In one blow they threw the idol of Radha Madhav on the ground. They looted all the copper and bronze cutlery used for the Divine food. They set fire to the roof. Then started attacking and looting from the main house. Then the house was put in fire. In this way village after village were looted and plundered and Hindus home vandalized, destroyed, and Hindu men either killed or converted and Hindu women were violated (Mukherjee, 2023).

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Conclusion

What we see from the above description is a systematic target and ethnic cleansing of Hindus in East Bengal with the aim to eradicate their cultural identity. The above incidents of course must be read in the context of the holy war wages by Muslims to wipe off culturally Hindu civilization from East Bengal. The result was a huge destruction, conversion, and one of the largest known flow of refugees from East to West Bengal. The cultural genocide in the form of destruction of temples and cultural artifacts continued during the Bangladesh Liberation War in 1971 and is continuing to this day. This shows that cultural genocide extends over several generations and its aim is the destruction of a civilization. This type of cultural genocide is more in line with the definition given by Jonorak who uses the word "Jatividhwansa, where the roots and branches of a tree (metaphor for civilization) is destroyed. We have to wait for the future to see what the future is for the Hindus of 'East Bengal" (now Bangladesh) and West Bengal.

(https://cadmus.eui.eu/handle/1814/43864).

Noakhali is historically known as Bhulua (Bengali: ভুলুয়া)is a district in southeastern Bangladesh, located in the Chittagong Division.

Mušrikūn مشركون (pl. of mušrik مشرك) are those who practice shirk, which literally means "association" and refers to accepting other gods and divinities alongside God (as God's "associates"). The Qur'an considers shirk as a sin that will not be forgiven if a person dies without repenting of it.

A term used in Arabic as a "faithful believer". Here probably used as a irony against the non believers, in this case Hindus.

Sandip Mukherjee, Noakhali. Published By Usha Publishing House, Arindam Roy, Kolkata, 2023. Henceforth all references to this book will be referred to as Noakhali with page numbers. The book is originally written in Bengali and here the given translations are by Rinita Mazumdar.

One who collects local taxes.

A derogatory term used for Hindus in South Asia.

Probably he is referring to the Durga Puja, the Goddess festival, the biggest festival of Hindu Bengalis.

This is the festival of the Goddess Laxmi, the Goddess of wealth, followed by the Durga Puja. In Bengal Laxmi is regarded as the daughter of Durga and come with her during Durga Puja and after her during the laxmi puja.

Friday is holy day or Jumma day for the Muslims.

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QnA with the scholars of JIGAS

Mandeep Singh Rissam
Advocate J&K High Court

Please tell us a little bit about yourself?

Education is a lifelong pursuit, and as an advocate with 12 years of practice in the Jammu and Kashmir High Court, my commitment to personal and professional growth led me to join the course at the esteemed Jonaraja Institute of Genocide and Atrocities Studies. This write-up aims to reflect on my experience, highlighting the reasons for my enrollment, the transformative nature of the program, and the impact it has had on my advocacy work.

How did you hear about JIGAS and why did you apply for the Genocide studies program?

Genocide and atrocities are profound violations of human rights that have far-reaching consequences on individuals, communities, and societies. Witnessing the impact of such heinous acts throughout my career as an advocate, I felt a deep sense of responsibility to contribute to the pursuit of justice and the protection of human rights. Joining the Jonaraja Institute provided me with a unique opportunity to deepen my knowledge, engage with like-minded professionals, and develop specialized expertise in this critical field.

What expectations did you have before you joined the program? Were those expectations met?

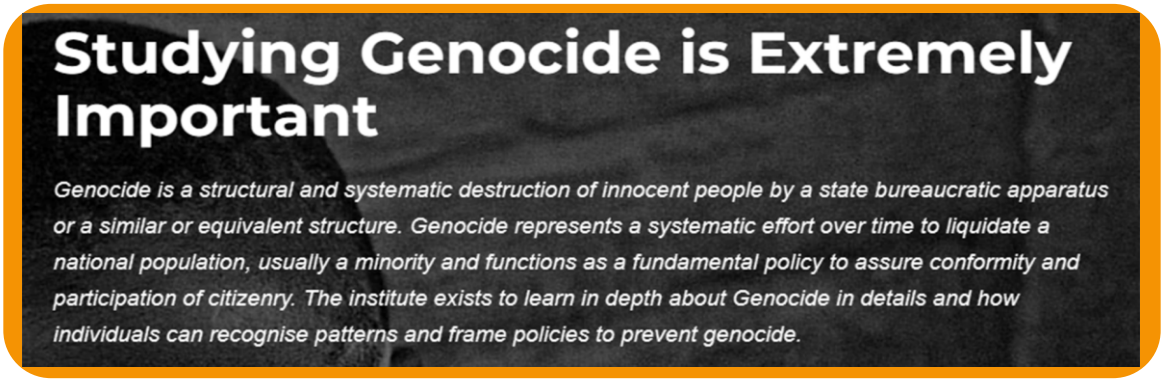
The course at the Jonaraja Institute proved to be a transformative experience, both personally and professionally. Collaborating with a select group of advocates, each bringing their unique perspectives and experiences fostered an environment of rich and insightful discussions. Engaging with fellow participants and esteemed faculty members allowed for the exploration of diverse viewpoints, deepening my understanding of the complex legal, social, and ethical dimensions surrounding genocide and atrocities.

What did you think about the curriculum that you were taught?

The Jonaraja Institute's reputation as a leading institution in the field of genocide and atrocities studies proved to be well-deserved. The guidance and expertise of the faculty provided invaluable insights and helped shape my understanding of the subject matter. Access to cutting-edge research, relevant case studies, and the latest developments in the field further enhanced my knowledge base. This exposure to expert knowledge and the institute's resources expanded my capacity to contribute effectively to the discourse on human rights and justice.

Did the program empower you to speak about forgotten genocides on national and international platforms?

One of the most rewarding aspects of the course was the opportunity to build connections with professionals who share a deep commitment to justice and human rights. The cohort size facilitated meaningful interactions and long-lasting connections. Collaborating with like-minded advocates, scholars, and experts not only expanded my professional network but also opened doors for future collaborations, enabling me to work collectively towards promoting justice, accountability, and the prevention of future human rights violations. Completing the course at the Jonaraja Institute has had a profound impact on my advocacy work. Equipped with a deeper understanding of genocide and atrocities, I am better prepared to address the complexities surrounding such grave human rights violations. The knowledge gained has enhanced my ability to advocate for justice, represent marginalized communities, and work towards ensuring accountability for perpetrators. The course has also reinforced my dedication to preventative measures and promoting a culture of human rights protection. My journey at the Jonaraja Institute of Genocide and Atrocities Studies has been a remarkable and transformative experience. By enrolling in the pilot course, I seized the opportunity to further my knowledge, engage in meaningful discussions, and network with professionals committed to justice and human rights. The expertise of the faculty, combined with the diverse perspectives of my fellow participants, has broadened my understanding and deepened my commitment to addressing genocide and atrocities. Armed with this newfound knowledge and network, I am more determined than ever to contribute to the pursuit of justice, advocate for the oppressed, and work towards a world free from the horrors of human rights violations.


Studying Genocide is Extremely Important
Genocide is a structural and systematic destruction of innocent people by a state bureaucratic apparatus or a similar or equivalent structure. Genocide represents a systematic effort over time to liquidate a national population, usually a minority and functions as a fundamental policy to assure conformity and participation of citizenry. The institute exists to learn in depth about Genocide in details and how individuals can recognise patterns and frame policies to prevent genocide.

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